REMARKS

Favorable reconsideration and allowance of the subject application are respectfully requested. Claim 1-9 are pending in the present application, with claims 1 and 9 being independent.

Claim Rejections under 35 U.S.C. 103

The Examiner rejected: claims 1-3 and 7-8 under 35 U.S.C. 103(a) as being unpatentable in view of Goto et al. (US 5,828,014); claim 9 under 35 U.S.C. 103(a) as being unpatentable over Goto et al. in view of Sawai et al. (4,967,128); and claims 4-6 under 35 U.S.C. 103(a) as being unpatentable over Goto et al. and further in view of Sawai et al. These rejections are respectfully traversed insofar as they pertain to the presently pending claims.

First, Applicants note that the cited art is newly cited. Secondly, Applicants respectfully submit that the Examiner failed to establish a *prima facie* case of obviousness and the Examiner's conclusionary statements are not a proper basis to substantiate an obviousness rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion of motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference must teach or suggest all the claim limitations, see *In re Vaeck*, 947 F.2d 48, 20 USPQ2d 1438 (Fed.Cir.1991).

Specifically, Applicants respectfully submit that Goto et al. fails to contain any teaching

that: (1) averages of a speed reference and a speed measurement for downward and upward constant-speed travel are calculated; or (2) that gain and zero factors are identified.

In rejecting independent claims 1 and 9 the Examiner alleges that these features are taught by Goto et al. in the abstract, col. 2 (lines 21-64), col. 6 (lines 4-48), and references Fig. 9. Even more specific, the Examiner alleges that the feature of identifying a gain factor and a zero factor is shown in Fig. 9 as items 3 and 36; and the feature of calculating averages of a speed reference and a speed measurement for downward and upward constant-speed travel is shown is item 2 of Fig. 9. Applicants respectfully submit that these features are simply not taught by Goto.

First of all, Applicants are unable to determine where the supposed item 36 is shown in Fig. 9, or even a description thereof in the specification of Goto et al. Also, item 3 of Fig. 9 of Goto et al. is a speed amp 3 that includes an amp 6, an integrator 6, and an adder 7 that adds a proportional component from the amp 5 and an integral value from the integrator 6 to provide a torque indicating signal to an adder 19, see col. 4, lines 5-8. The speed amp 3 (in combination with the amp 6, integrator 6, and adder 7), however, does not identify gain and zero factors.

Furthermore, the Examiner also alleges that item 2 in Fig. 9 of Goto et al. supposedly teaches the feature of calculating averages of a speed reference and a speed measurement for downward and upward constant-speed travel. This allegation is simply not correct. Referring to col. 4, lines 1-4, it is taught that the subtractor 2 provides a deviation between a speed command and the actual motor speed. Averages of a speed reference and a speed measurement are simply not calculated. Thus, Goto et al. also clearly fails to teach this feature.

Moreover, the Examiner admits that Goto fails to teach a synchronous permanent magnetic motor. To cure this deficiency, the Examiner asserts that "the use of a synchronous

permanent magnetic motor connected to a feedback sensor is common place in the motor control art," and it would be obvious to use such a motor with Goto's invention. (See Office Action, page 3, paragraphs 2-3.)

Applicants disagree and submit that it appears the Examiner is taking Official Notice.

Applicants traverse the implied Official Notice and respectfully remind the Examiner of the provisions of MPEP §2144.03, and the precedents provided in *Dickinson v. Zurko*, 527 U.S. 150, 50 USPQ2d 1930 (1999) and *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). An Official Notice rejection is improper unless the facts asserted are well-known or common knowledge in the art, and capable of instant and unquestionable demonstration as being well-known. It is never appropriate to rely solely on "common knowledge" without evidentiary support in the record as the principle evidence upon which a rejection is based. Accordingly, Applicants traverse the Official Notice and request that the Examiner either cite a competent prior art reference in substantiation of these conclusions, supply a personal affidavit supporting the Examiner's allegation, or else withdraw the rejection.

Dependent claims 2-8 should be considered allowable at least for depending from an allowable base claim.

Accordingly, withdrawal of the rejection is respectfully requested.

Conclusion

In view of the above amendments and remarks, this application appears to be in condition for allowance and the Examiner is, therefore, requested to reexamine the application and pass the claims to issue.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Martin Geissler (Reg. 51,011) at telephone number (703) 205-8000, which is located in the Washington, DC area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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